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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/644,711 | 08/20/2003 | Antony Keith Van Dyk | TJk/410 | 6116 |
| 27717 | 7590 | 10/27/2005 | EXAMINER | |
| SEYFARTH SHAW LLP 55 EAST MONROE STREET SUITE 4200 CHICAGO, IL 60603-5803 | | | NORDMEYER, PATRICIA L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1772 | |

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,711

Applicant(s)

VAN DYK ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 88-105 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 88-105 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Repeated Rejections

1. The 35 U.S.C. 102(b) rejection of claims 88 – 91, 93 – 95, 98, 99, 104 and 105 as anticipated by Allbrighton in the office action dated February 24, 2005 is repeated for the reasons previously of record as the Applicant's arguments are unpersuasive.
2. The 35 U.S.C. 102(b) rejection of claims 88 – 91, 93 – 96, 104 and 105 as anticipated by Graham et al. in the office action dated February 24, 2005 is repeated for the reasons previously of record as the Applicant's arguments are unpersuasive.
3. The 35 U.S.C. 103 rejection of claims 97 and 100 over Allbrighton in view of Merritt in the office action dated February 24, 2005 is repeated for the reasons previously of record as the Applicant's arguments are unpersuasive.
4. The 35 U.S.C. 103 rejection of claims 101 - 103 over Allbrighton in view of Hamada et al. in the office action dated February 24, 2005 is repeated for the reasons previously of record as the Applicant's arguments are unpersuasive.
5. The 35 U.S.C. 103 rejection of claims 92 and 102 over Allbrighton in view of Burke et al. in the office action dated February 24, 2005 is repeated for the reasons previously of record as the Applicant's arguments are unpersuasive.

Response to Arguments

6. Applicant's arguments filed August 26, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Allbrighton, Graham, Burke and Merritt fail to disclose retaining a layer of formulation without excluding the formulation vapor in the container from contacting the formulation, all four prior art references allow vapor from the formulation to be in contact with formulation, and do not exclude the vapor, (see the respective rejections above); however, they do inhibit the addition of more air from the outside environment, which is not covered by the claim limitations. Even though more air is prohibited from entering into the container, there is air located between the anti-skinning layer and the formulation surface, which contains the formulation vapor.

In response to Applicant's argument that the prior art fails to disclose the anti-skinning layer entirely on an internal surface, it is the Examiner understanding of the claim limitation that Allbrighton, Graham and Burke all meet this limitation since the anti-skinning materials are located completely within the interior of the tin can, thereby they are entirely on an internal surface of the container, i.e. resting against the inside walls of the container.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the anti-skinning layer having to be lined onto the internal surface of the sealing means or the container)

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are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The language of the claims state that “an anti-skinning layer located on at least a portion of the internal surface”. Allbrighton, Graham and Burke all meet this limitation since the anti-skinning materials are located completely within the interior of the tin can, thereby they are entirely on an internal surface of the container, i.e. resting against the inside walls of the container

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-

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1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
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pln

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER 10/25/05
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